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*Urgent and Confidential*

Date: August 29, 2006

**TO:** USPTO  
Examiner S. Shechtman  
Art Unit 2125  
Fax Number 571-273-8300

**FROM:** Paul E. Steiner  
Fax Number 703-633-3303  
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**SUBJECT:** Application Number 10/606,514  
Inventor(s) David S. DeLORENZO, et al.  
Date Filed June 25, 2003  
Docket Number P15056  
Title METHOD AND APPARATUS FOR MEMORY  
BANDWIDTH THERMAL BUDGETTING

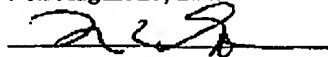
## INCLUDED IN THIS TRANSMISSION:

Fax Cover Sheet	1 page
Transmittal	1 page
Request for Rehearing	6 pages
Under 37 CFR § 41.52	

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Paul E. Steiner

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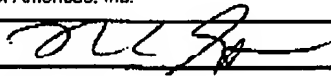
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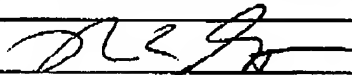
<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/603,514	
	Filing Date	6/25/2003	
	First Named Inventor	David S. DeLorenzo	
	Art Unit	2125	
	Examiner Name	S. Shochman	
Total Number of Pages in This Submission	8	Attorney Docket Number	P15056

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53.	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input checked="" type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Fax cover sheet
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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

David S. DeLORENZO, et al.

Serial No.: 10/606,514

Group Art Unit: 2125

Filed: June 25, 2003

Examiner: S. Shechtman

FOR: METHOD AND APPARATUS FOR MEMORY BANDWIDTH  
THERMAL BUDGETTING

## REQUEST FOR REHEARING UNDER 37 C.F.R. § 41.52

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 41.52, Applicant respectfully requests reconsideration of the following points in the Decision on Appeal mailed June 29, 2006.

I. The Board erroneously eliminates a claim element from the claims.

The Board appears to acknowledge that the reasoning applied by the Examiner is incorrect. The Board identifies those portions relied upon by the Examiner for allegedly reading on the claims, but does not apply those portions in making what is essentially a new basis for the rejection (applying other portions of Nizar for allegedly reading on the claims).

However, the Board commits essentially the same error as the Examiner in their analysis. As correctly noted by the Board, a rejection for anticipation under section 102 requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently. In re Paulsen, 30 F.3d 1475, 1478-79,

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31 USPQ2d 1671, 1673 (Fed. Cir. 1994). The Board erroneously leaves the four corners of the Nizar reference in attempting to read the reference on the claims.

Claim 1 recites "the controller is adapted to calculate a temperature estimate of the device." The Board appears to accept that Nizar does not expressly provide this teaching. For the Board to abide by the law stated in In Re Paulsen, the Board must accept that claim 1 is not anticipated by Nizar because the four corners of Nizar do not expressly describe this claim element (neither the Board nor the Examiner has asserted any reliance on inherency).

Apparently the Board accepts the weakness of the Examiner's position because the Board offers an alternative teaching of Nizar for this claim element. However, the Board's position is clearly erroneous. The Board argues:

Since column 3, lines 10-15, of Nizar describes the monitoring of temperature and determining that the temperature is approaching the thermal specification (in our view, the "determining" step is a calculation step, as broadly claimed),

For the Board's convenience, the cited portion of Nizar follows:

In an alternative 10  
embodiment, if the throttling logic monitors the temperature  
of the device and determines that the device is approaching  
and/or is outside its thermal specification, or if the throttling  
logic receives an indication to that effect, then it transitions 15  
to throttle state 127.

Applicants first note the absence of any express teaching which reads on the noted claim element. The Board commits clear legal error by leaving four corners of the document and asserting essentially that "determine" = "calculate". This effectively eliminates the noted claim element from the claim. If the Board can simply acknowledge the absence of

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any express teaching in the relied upon portion of Nizar, the law of anticipation requires reversal of the rejection.

In any event, the Board miscomprehends the relevant teaching of the cited portion. One of ordinary skill in the art would recognize that the "alternative" embodiment refers to an embodiment in which a physical temperature reading is available. In that case, directly 'monitoring' the temperature of the device would be considered more accurate (i.e. a true closed loop control) than using access counts. But no estimated temperature is calculated (an actual temperature is read).

The Board attempts to uphold the Examiner's initial reasoning, stating that "a 'determination' of a temperature may also be a calculation." As an initial matter, the Board must accept the absence of any express teaching and under the law of anticipation as set forth in In Re Paulsen, reverse the rejection unless there is an inherent teaching. In this case, the Board appears to be slipping into reliance on a theory of inherency. However, "may also be" is not the proper test for inherency (and in fact suggest the existence of other possibilities which disproves inherency).

Under any reasonable claim construction, the claim recitation "calculate a temperature estimate" requires some type of calculation of an actual temperature value. The 'monitoring' described in Nizar is not a calculation, it is at most the reading of a sensor. The various 'determinations' described in Nizar are not necessarily calculations and are not of any actual temperature values. Staying within the four corners of the reference, there is simply no express or inherent teaching in Nizar of the calculation of an actual temperature value. Accordingly, favorable reconsideration and reversal of the rejection of claims 1, 13, and 25 is respectfully requested.

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II. The Board erroneously fails to consider the claims as a whole and in proper context

In the Decision on Appeal, the Board states:

However, the claimed  
"calculate a temperature estimate" is very broad,

Applicants understand and appreciate that taken alone or in out of context, claim words can be abstracted to a degree where almost any description can read on almost any claim term. However, applicants are left with only the English language in which to stake the boundaries of the claims. In applicants view, any reasonable claim construction of the phrase 'calculate a temperature estimate' requires an actual calculation of an actual temperature value.

While it is improper to read limitations from the specification into the claims, the specification may provide context for construing the claims and understanding the meaning of claim recitations. See In Re Okuzawa, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976). In the present application, the specification describes calculating a temperature estimate and describes numerous examples of equations for calculating a temperature estimate. The specification describes examples of how the calculated temperature estimate is used to control access to a device. All of these examples require the actual calculation of an actual temperature value. This is the proper context for construing the claim language.

The prior art technique of Nizar corresponds more or less to the method described in Fig. 2 of the present application. The specification describes numerous comparisons which contrast the claimed invention using calculated temperature estimates against the prior art method of using only access counts and budgets. The specification describes how the use of a calculated temperature estimate and control access based on the calculated temperature estimate may provide improved performance over the prior art

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method of using only access counts and access budgets. One of ordinary skill in the art would appreciate that the recited controlling access to a device based on a calculated temperature estimate is different from the prior art method of using only access counts and access budgets.

Applicants submit that the Board initial impression is in fact correct:

that Nizar controls the temperature of a device by comparing access rates and that this is different from the instant invention wherein a temperature is calculated and access to a device is controlled in accordance with the calculated temperature.

The claims do not recite determining an access rate as a proxy for device temperature and controlling access to the device based on the determined access rate. This is the prior art method that is described within the four corners of Nizar. In the proper context of the specification, and reading the claim as a whole, calculating a temperature estimate and controlling access to a device based on the calculated temperature estimate is different from what is described in Nizar. Under any reasonably broad construction, claims 1, 13, and 25 would not read on determining an access rate as a proxy for device temperature and controlling access to the device based on the determined access rate.

In applicants' view, the Board has construed the claims unreasonably broadly and failed to consider the claim as a whole and in the proper context. Applicants respectfully request favorable reconsideration and reversal of the rejection of claims 1, 13, and 25.

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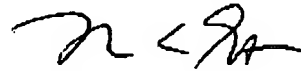
Serial No.: 10/606,514

In view of the foregoing, favorable reconsideration and reversal of the rejection is respectfully requested. Early notification of the same is earnestly solicited. If there are any questions regarding the present application, the Board is invited to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,

August 29, 2006

Date



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